

# Order

Michigan Supreme Court  
Lansing, Michigan

April 1, 2015

Robert P. Young, Jr.,  
Chief Justice

150134

Stephen J. Markman  
Mary Beth Kelly  
Brian K. Zahra  
Bridget M. McCormack  
David F. Viviano  
Richard H. Bernstein,  
Justices

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

v

SC: 150134  
COA: 308654  
Kent CC: 11-007667-FC

MELVIN JAMES MARSHALL,  
Defendant-Appellant.

On order of the Court, the application for leave to appeal the August 7, 2014 judgment of the Court of Appeals is considered and, pursuant to MCR 7.302(H)(1), in lieu of granting leave to appeal, we REVERSE that part of the Court of Appeals judgment that affirmed the trial court's scoring of Offense Variable (OV) 13, and we REMAND this case to the Kent Circuit Court for resentencing.

The trial court assessed 25 points for OV 13. But pursuant to MCL 777.43(2)(c), "[e]xcept for offenses related to membership in an organized criminal group or that are gang-related, . . . conduct scored in offense variable 11 or 12" must not be scored under OV 13. As the Court of Appeals correctly held, the defendant's acts of resisting or obstructing the police would have been properly scored under OV 12, but it erred in concluding that those acts were "related to membership in an organized criminal group" or "gang-related." Therefore, the trial court erred in scoring OV 13 because, without the resisting or obstructing, there may not have been "3 or more crimes against a person." MCL 777.43(1)(c). Because the erroneous scoring of OV 13 changed the applicable guidelines range, the defendant is entitled to resentencing. See *People v Francisco*, 474 Mich 82 (2006).

In all other respects, leave to appeal is DENIED, because we are not persuaded that the remaining question presented should be reviewed by this Court.



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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

April 1, 2015

  
Clerk